



**Attorney General
Betty D. Montgomery**

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August 24, 2000

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Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth Street
S.W. Room TW-B204F
Washington, D.C. 20554

Re: *In the Matter of Numbering Resource
Optimization, CC Docket 99-200/et al.*

Dear Ms. Salas:

Enclosed please find the original and five copies of the replies of the Public Utilities Commission of Ohio in the above referenced docket. Please return one copy in the enclosed self-addressed stamped envelope.

Thank you for your consideration in this matter.

Respectfully submitted,

A handwritten signature in cursive script, reading "Jodi J. Bair".

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BEFORE THE
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Numbering Resource Optimization) CC Docket No. 99-200
)

REPLIES OF THE PUBLIC UTILITIES COMMISSION
OF OHIO

I. INTRODUCTION AND BACKGROUND

The Public Utilities Commission of Ohio (PUCO or Ohio Commission) submits these replies in response to the Oppositions filed in this docket. On July 14, 2000, the PUCO filed a Petition for Reconsideration (Petition) with the Federal Communications Commission (FCC) responding to its March 31, 2000 Report and Order regarding number resource optimization (NRO Order). Several parties filed Oppositions regarding the Petition of the PUCO and the Petitions of other parties. In this Reply, the PUCO will address specific issues that it believes to be extremely important to numbering optimization; however, this does not mean that the PUCO agrees with all other issues that will not be discussed. These Replies addresses the following three issues: (1) state access to carrier numbering data; (2) implementation of service/technology overlays; and (3) sequential number assignment.

II. DISCUSSION

A. State Access to Carrier Numbering Data

The PUCO has very actively administered Ohio's number relief planning. In fact, Ohio was the only state that sought, and was granted by NANPA, the authority to

administer its own relief planning. Further, in November of 1999, the PUCO was granted emergency authority to institute certain delegated duties including NXX code allocation and reclamation standards, number pooling trials and sequential number assignment standards.

An important aspect of these delegated duties involve gathering accurate numbering information from carriers. The PUCO had planned to collect its own data from carriers, but must now rely exclusively on NANPA data, which, as noted in the NOR, needs improvement. In the PUCO's Petition, the Ohio Commission pointed out that the May 1999 COCUS Report led to inaccurate conclusions about the timing of NPA exhausts. The PUCO is responsible to the public for addressing the area code relief, yet is now denied the ability to obtain independent forecast and utilization information from carriers on a regular basis. As noted by CBT, "[i]f the states cannot get timely access to the information they need to perform their duties, then the number optimization and conservation efforts the Order is designed to encourage may be hampered and carriers and their customers may be harmed."¹ The PUCO will be unable to carry out the duties and responsibilities required by the FCC's numbering order without the ability to collect data independently or, at a minimum, to have unfettered access to NANPA data under an appropriate confidentiality arrangement.

Several parties urge the FCC to reject the ability of the states to independently gather numbering data on a regular reporting basis.² On the other hand, AT&T and Cincinnati Bell Telephone Company support the states' need to obtain this information

¹ Comments of Cincinnati Bell Telephone Company Comments, August 15, 2000, at 6.

² Comments of Bellsouth, Verizon, Qwest, Viocestream, and Personal Communications Industry Association, August 15, 2000.

from NANPA, and believe that "this is a reasonable request since the states are delegated various responsibilities under the Order."³

The PUCO remains concerned that it will not be able to meet the numbering obligations imposed upon it by the FCC's NOR without the authority to collect additional data from carriers. How can Ohio accurately and reliably investigate and reclaim codes without independently collecting data? How can the PUCO sufficiently resolve carrier disputes without up-to-date precise information? As stated by the California Public Utilities Commission, "[s]tate commissions have independent authority over carriers, including the ability to obtain data carriers consider confidential."⁴ However, California also recognized that there are limitations on a state commission's ability to require regular reporting of historical and forecast data.⁵ NARUC recognized that "[s]tates require unrestricted access to carrier data to effectively implement and administer number conservation measures[.]"⁶ NARUC's resolution on the numbering matter urged the "FCC to ensure carrier data is readily available to the individual states free of charge[.]"⁷ The PUCO's ability to independently collect numbering data, including historical and forecasted data at the thousands block level, is essential to the ability of the PUCO to fulfill its delegated authority, including code investigation and reclamation, pooling trial selection and management, and utilization threshold compliance. The PUCO is unconvinced that

³ Comments of Cincinnati Bell Telephone Company, August 15, 2000, at 5. AT&T stated that "[i]f appropriate confidentiality protections are in place, AT&T does to oppose these requests [to obtain carrier-specific data from the NANPA[.]]"

⁴ Opposition to Petitions for Reconsideration, California Public Utilities Commission, August 15, 2000 at 11.

⁵ *Id.* at 12.

⁶ *Resolution on Telephone Numbering*, Sponsored by the Committee on Telecommunications, Adopted by the NARUC Board of Directors July 26, 2000.

those states that wish to collect such information (probably on a few) would create unnecessary costs or burden on the industry and the benefit of such information tremendous to the PUCO's role in relief planning.

The NOR also discussed the need for confidential treatment of NANPA data. The Personal Communications Industry Association (PCIA), commenting in opposition to the Petitions for Reconsideration, went so far as to specifically enumerate procedures that the FCC should undertake before giving a state information.⁸ The PCIA recommended that the FCC: "(1) requires states seeking confidential data to certify acceptance of the FOIA obligation to protect trade secrets; (2) review state procedures to ensure protection of confidential information; and (3) consider and rule upon requests by the public for access to confidential documents in accordance with the FCC's responsibility for carrying out the requirements of FOIA, with the state bound by the FCC's requirements."⁹ The FCC must reject this idea. Not only would this be an extremely time-consuming process, but Ohio law provides adequate protection to carriers against the release of confidential forecast and utilization data. The suggested prolonged process is unnecessary.

Even though records in the custody or control of public bodies generally are public records available for inspection, the Ohio Public Records Act exempts from disclosure "records the release of which are prohibited by state or federal law."¹⁰ Because the FCC requires that the information be treated as confidential, the PUCO will treat the FCC's Order as a prohibition under federal law for purposes of the Ohio

⁷ *Id.*

⁸ Opposition to and Support for Petitions for Reconsideration, The Personal Communications Industry Association, August 15, 2000, at 7.

⁹ *Id.* at 7, citing to Verizon Wireless Petition at 18-21.

Records Act.¹¹ The PUCO requests that the FCC reject the procedure suggested by the PCIA and clarify that states that have communicated to the FCC that state law sufficiently protects confidential information are entitled to receive the data. There is no need for a separate confidentiality agreement.

The FCC delegated to states the additional numbering authority to require more efficient management of thousand blocks and to implement mandatory thousands-block pooling under certain conditions. In accordance with this FCC requirement, state commissions shall have access to the disaggregated data submitted to the NANPA on a semi-annual basis and may request copies directly from carriers. The FCC, consistent with its NOR in this docket, should deny requests to only make aggregated data available. The PUCO also requests that the FCC clarify that data requested outside of the carriers semi-annual reports to NANPA be made readily available to state commissions by NANPA. The PUCO's experience is that the requirement of carriers to provide the PUCO staff with copies of numbering resource requests to NANPA has been largely ignored by Ohio carriers. One party suggested that the state commissions resolve carrier disputes within 15 days.¹² How can a state commission resolve such disputes with only semi-annual data? In other words, the carriers want the state commissions to make immediate decisions; however, these carriers must also recognize that these decisions will be based on numbering data that may be six months old.

¹⁰ Ohio Rev. Code 149.43(A)(1) and 149.43(A)(1)(r) (Baldwin 2000)

¹¹ The FCC requires the state commissions to treat this data, as well as forecast and utilization data, as confidential. FCC Order 00-104 at Paragraph 82., See also the Ohio Revised Code that employees or agents of the Public Utilities Commission of Ohio are prohibited from divulging information acquired "in respect to the transaction, property, or business of any public utility . . ." except in a report to the PUCO, while testifying in its proceedings, or when called on to testify in court. Any person violating the latter section is disqualified from acting as an employee or agent of the PUCO, and is subject to a fine. Ohio Rev. Code 4901.16 (Baldwin 2000).

Therefore, if the PUCO is not allowed to independently collect its own data, it is absolutely essential that it have access to *all* of NANPA's data under the appropriate confidentiality procedures recommended by the PUCO.

Parties in opposition to allowing states immediate access to all data reported to NANPA urged the FCC to reject proposals seeking to require the NANPA and the Pooling Administrator to contemporaneously notify state commission of all code and block applications.¹³ Bellsouth submits that receiving this type of information would swamp the state commissions and overwhelm NANPA and the Pooling Administrator. The PUCO must have this information for the reasons previously discussed. If states do not wish to receive this information, they can ask that the NANPA not provide it to them thus eliminating the strain on NANPA to provide every state with the information. The PUCO strongly objects to the characterization that the PUCO would be "swamped" by the receipt of carrier applications and code requests of Ohio carriers. As stated many times, the PUCO believes that this information is absolutely essential to the PUCO's delegated duties and the PUCO's ability to effectively plan for area code relief in the state of Ohio. The PUCO strongly believes that it is the decision of the state commission alone as to whether a commission needs such information and not for a carrier to decide whether a state will be overwhelmed by such information.

¹² Bellsouth Opposition and Comments, August 15, 2000 at 18.

¹³ Bellsouth Opposition and Comments, August 15, 2000, at 11.

B. Service/Technology Specific Overlay

Several parties raised opposition to Ohio's continued request for the ability to implement service and/or technology specific overlays. Again, the PUCO points to the record developed in its area code proceedings. This record indicates significant preference of Ohio consumers for a technology and/or service specific overlay. In particular, SBC Communications, Inc. (SBC) claims, without support, that this type of overlay "could result in the immediate assignment of as many as 100 new, previously unforecasted NPAs." Further, SBC argues that such overlays would result in mandatory 10-digit dialing for wireless and wireline customers in the area covered by the overlay.

SBC misses the point of the Ohio Commission's Petition. The PUCO understand that a technology specific overlay for wireless technology would result in 10-digit dialing in the affected NPA. The thrust of our comments was that the FCC should consider the assignment of other electronic forms of communication (e.g., ATMs, pay-at-the-pump) to an overlay. These forms of electronic transaction are the least affected by area code changes and, therefore, appear to be likely candidates for assignment to their own NPA. These types of services do not necessarily have to result in 10-digit dialing in the NPA, Ohio consumers could accept 10-digit dialing to forestall yet another area code exhaust. Eight years ago, Ohio had only four area codes and now has ten, with an eleventh area code on the near-term horizon. It is hard to argue with the Ohio public that a service/technology specific overlay is not acceptable because that same public may face the adoption of yet another NPA and/or 10-digit dialing. These are conditions that all Ohio consumers currently must accept on a much too frequent basis.

The solution is the one set forth in the Ohio Commission's Petition and supported by the July 26, 2000 Resolution adopted by the National Association of Regulatory Utility Commissioners (NARUC) at its summer meeting (attached). The Ohio Commission strongly supports the establishment of one or more national NPAs for the assignment of non-geographical based services and/or technologies. Such an approach would limit the creation of new NPAs and would forestall future exhausts while not necessarily requiring 10-digit dialing. The FCC must reconsider this issue in the context of our Petition or in subsequent stages of the Numbering Optimization Proceeding.

C. Sequential Number Assignment

Several parties in opposition to the Ohio Commission's sequential number assignment requirement appear to misunderstand Ohio's requirement. The PUCO's requirement is not that carriers must meet a 75 percent utilization threshold in an open block prior to opening a new block. As AT&T correctly observes, the purpose of Ohio's requirement is to preserve as many intact or minimally contaminated thousands blocks for pooling. A new thousands block may be opened once a carrier has assigned 75 percent of *all* the telephone numbers in *all* of the overly contaminated thousands blocks previously opened by that carrier. A thousands block is considered overly contaminated when it has a telephone number assignment level of at least 10 percent.

This requirement gives the carriers flexibility in the assignment of numbers but provides a standard by which such assignments may be objectively reviewed. Of course, there may be situations where meeting such a standard proves impossible. Upon appropriate justification to state commissions, exceptions could be appropriately addressed. Therefore, the PUCO respectfully requests the adoption of Ohio's sequential

number assignment formula rather than the FCC's general sequential number assignment rule for the reasons set forth herein and in the PUCO's Petition.

III. CONCLUSION

The PUCO wishes to thank the FCC for the opportunity to file its response in this proceeding.

Respectfully submitted,



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Date Submitted: August 24, 2000

Resolution on Telephone Numbering

WHEREAS, New telecommunications services and competition between those services has provided consumers with new opportunities and lower priced alternatives to traditional telephone services; and

WHEREAS, The growth in new telecommunications services has also raised issues pertaining to telephone number exhaust that are currently being responded to by state commissions, the Federal Communications Commission ("FCC") and the telecommunications industry; and

WHEREAS, Unless telephone numbers are assigned in a more efficient manner, growth in new services could accelerate telephone number exhaust in the North American Numbering Plan; and

WHEREAS, The states, the FCC, the telecommunications industry and the North American Numbering Council ("NANC") have been working together to implement various telephone numbering conservation and optimization measures to establish a more efficient method of assigning telephone numbers; and

WHEREAS, Many states have recognized the need for action on numbering issues and have petitioned the FCC for additional delegated authority to better conserve numbering resources within their individual state; and

WHEREAS, The FCC has recognized the significant role states have in numbering issues and have granted in some part 25 of the state petitions while additional state petitions remain pending; and

WHEREAS, State commissions with additional numbering authority have issued a number of decisions and orders addressing numbering issues, including, but not limited to number exhaustion and pooling issues; and

WHEREAS, The composition of the NANC consists of 30 members with 20 members representing the industry, 4 members representing the National Association of Regulatory Utility Commissioners ("NARUC") states and 3 members representing the National Association of State Utility Consumer Advocates ("NASUCA") states; and

WHEREAS, Even though the FCC has increased the state representation to the NANC, additional state representation would provide a better balance between industry and public interests and ensure that the states have greater input in the NANC decision making process when advising the FCC; and

WHEREAS, As a result of competition and the advent of new technologies assignment of large blocks of telephone numbers has caused area codes to exhaust more rapidly than they would otherwise forcing citizens to undergo area code relief through the introduction of new area codes; and

WHEREAS, One solution offered to delay area code exhaust is to assign new area codes by service type, and

WHEREAS, The wireless industry is one of the most prolific growth industries in the country today, experiencing nearly 40% growth rates, making it highly unlikely that service type number assignment would deter its continued growth; and

WHEREAS, Various states have petitioned the FCC to permit the assignment of telephone numbers by service/technology overlays refuting the idea that such assignment would be anti-competitive; and

WHEREAS, The FCC has recently imposed certain appropriate reporting requirements and technological upgrades that attempts to lead to improved utilization of numbering resources; and

WHEREAS, The FCC in CC Docket No. 99-200, In the Matter of Numbering Resource Optimization, released March 31, 2000, Report and Order and Further Notice of Proposed Rulemaking ("NRO") does not direct the North American Numbering Plan Administrator ("NANPA") to make CO Code

application materials available to the states. NANPA shall not spend any extra resources in providing such materials to the states; and

WHEREAS, States require unrestricted access to carrier data to effectively implement and administer number conservation measures; and

WHEREAS, Number pooling, a key measure to improving the optimization of numbering resources, requires implementation of local number portability; and

WHEREAS, The FCC has extended the date to November 24, 2002, by which all wireless providers must be LNP-capable; and

WHEREAS, State commissions have been informed by some carriers that they will be unable to comply with reporting requirements as ordered by the states in response to the numbering conservation authority previously delegated to them by the FCC; *now therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners ("NARUC"), convened in its 2000 Summer Meetings in Los Angeles California, states that the association appreciates the FCC's recent additional NARUC and NASUCA appointments to the NANC; *and be it further*

RESOLVED, NARUC recommends that the FCC adjust the membership of the NANC by adding three additional NARUC members to the council bringing the total NARUC participation to seven; *and be it further*

RESOLVED, NARUC urges the FCC on an expedited basis to establish parameters for the implementation of service/technology overlays and act on the states' pending service/technology specific overlay petitions; *and be it further*

RESOLVED, That NARUC urges the FCC to authorize the establishment of one or more national non-service-specific area codes that would be available on a voluntary basis to service providers that do not require geographically specific NXXs; *and be it further*

RESOLVED, NARUC urges the FCC to act expeditiously on the pending state petitions for additional delegated authority for implementing numbering conservation measures; *and be it further*

RESOLVED, NARUC urges the FCC to permit states at their option, to implement area codes for certain services/technologies in order to delay the exhaust of state Number Plan Areas; *and be it further*

RESOLVED, The NARUC urges the FCC to ensure carrier data is readily available to the individual states free of charge; *and be it further*;

RESOLVED, The NARUC urges the FCC to affirm authorized state commissions' orders regarding telephone numbering decisions and the states' ability to exercise their delegated authority on numbering issues and require carriers to comply with previous state commission decisions and orders; *and be it further*

RESOLVED, The NARUC urges the FCC to maintain November 24, 2002, as the date by which all wireless providers must become LNP-capable.

*Sponsored by the Committee on Telecommunications
Adopted by the NARUC Board of Directors July 26, 2000*